84-343

No.

Office-Supreme Court, U.S.
FILED
SEP 4 1984
ALEXANDER L. STEVAS,
CLERK

In The

Supreme Court of the United States

October Term, 1984

JAMES C. GABRIEL,

Petitioner Pro Se,

vs.

THE INTERSTATE COMMERCE COMMISSION and UNITED STATES OF AMERICA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JAMES C. GABRIEL
Petitioner Pro Se
P.O. Box 94
Sea Girt, New Jersey 08750
(201) 449-2580

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QUESTION PRESENTED

Are the judges of the United States Court of Appeals for the Third Circuit obeying their oath of office "I do solemnly swear and affirm that I will to the best of my ability, preserve, protect and defend the Constitution of the United States," when the judges of the Third Circuit do not enforce the Constitution of the United States' Fifth and Fourteenth Amendment, Section 1, by refusing to issue, for petitioner, an order to the I.C.C. ordering them to evaluate petitioner's property in Missouri Pacific R.R. "B" common stocks under the Fifth and Fourteenth Amendments, Section 1, and under Section 19a (49 U.S.C. Sec. 19a) of the Interstate Commerce Act in order for the I.C.C. to find the true value of petitioner's Class B MoPac common stocks?

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No.

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On petition for review of an order of the Interstate Commerce Commission, Finance Docket No. 30,000.

Submitted under Third Circuit Rule 12(6), May 3, 1984. Rule 12(6) under the Third Circuit Rules is for frivolous or unimportant cases. But petitioner's Class B common stocks in Missouri Pacific Railroad Company have a current value of $4,000,000 in the over the counter New York stock market. These MoPac Class B common stocks owned by petitioner have a potential value of

$40,000,000 after due process evaluation under the Fifth and Fourteenth Amendments Section 1, and under Section 19a (49 U.S.C. Sec. 19a) of the Act, Section 19a is for for "valuation of property of carriers."

OPINION BELOW

The order of the United States Court of Appeals for the Third Circuit sur petition for rehearing by appellant was received and filed — denied June 4, 1984.

JURISDICTION

The judgment order of the Court of Appeals herein was entered May 3, 1984.

The sur petition for rehearing by the Court en barra filed by appellant was received, filed and denied June 4, 1984.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). Jurisdiction is also conferred by the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth and Fourteenth Amendments of the United States Constitution and 49 U.S.C. Sec. 19a are involved.

STATEMENT OF THE CASE OF THE ISSUES PRESENTED FOR REVIEW

What Petitioner Seeks

1. The sole issue petitioner is presenting for review is petitioner's constitutional rights as a property owner of Missouri Pacific Railroad Company Class B equity bearing common stocks.

He seeks to have his Class B common stocks evaluated under due process of law under the Fifth Amendment and the Fourteenth Amendment, Section 1 of the United States Constitution, and under Section 19a (49 U.S.C. Sec. 19a) of the Act, which is for "valuation of property," in order to have the Supreme Court of the United States remand this MoPac case to the United States Court of Appeals for the Third Circuit, in order to have the judges of the Third Circuit issue an order, ordering the Interstate Commerce Commission to evaluate petitioner's Missouri Pacific Railroad Company Class B equity bearing common stocks under the Fifth and Fourteenth Amendments, Section 1 and under Section 19a (49 U.S.C. Sec. 19a) of the Act which is for "valuation of property of carriers," in order for the I.C.C. to find the true value of petitioner's Class B common stocks.

2. Petitioner on June 15, 1973, voted against the approval of the Plan of Recapitalization of the MoPac company, including the proposed amendment to the Company's articles of association. This was a plan which had required petitioner to sell his MoPac Class B common stocks at an arbitrary value of $2,450 per share, when Class B had a value of $22,500 per share on a due process of law evaluation under the Fifth and Fourteenth Amendments, Section 1 and under Section 19a of this Act, which is for the "valuation of property carriers."

3. Neither the United States District Court nor the I.C.C. ever attempted to set the true value of the petitioner's Class B common stocks. The $2,450 value per Class B common equity bearing stocks was Mississippi River Corporation's plan. Mississippi River Corporation, since 1963, had controlled MoPac's Board of Directors by its 63% voting control of all voting stock at MoPac. The Plan of Recapitalization was a one sided affair in favor of Mississippi River Corporation, planned by Mississippi River Corporation to take control of MoPac in an underhanded and unfair way. It borrowed $35,000,000 from the First National

City Bank of New York with which to buy Class B common stocks in order to suit its own plan of controlling MoPac and its vast land grants-mineral rights, of 16,738,413 acres, in coal in billions of tons, and trona in billions of tons, and natural gases in trillions of cubic feet, and oil in billions of barrels.

4. The Plan of Recapitalization was concocted by Mississippi River Corporation which elected Missouri Pacific Railroad Company's Board of Directors in 1963. By 1963 Mississippi owned a majority of MoPac's voting stock, and by 1963 owning 63% of the MoPac Class A #5 preferential stock, MoPac owning 63% of the MoPac preferential stock of $100 value per share. (*See* May 8, 1973 prospectus of MoPac, page D-2.) The Plan of Recapitalization concocted by Mississippi as of December 31, 1972 gave the Class A 74.5% of MoPac's equity, raised from 34.5%, and gave Class B equity bearing common 25.5%, which had been reduced from its 65.5% equity, or a reduction of 61% of Class B common stockholder's equity. This meant that Class B cash and property values, transferred to the Class A $5 preferred, $100 per share value stocks, without the payment of any taxes to the United States Government I.R.S., which the Class A still owes to the I.R.S. for this huge transfer from Class B, was $800,000,000.

The I.C.C. went along with Mississippi and did not evaluate Class B common under the Fifth and Fourteenth Amendments, Section 1, or by use of Section 19a of the Act, "valuation of property of carriers." The I.C.C. said that $2,450 per Class B was "fair value," which meant that the I.C.C., Commission Division 3, headed by Commissioner Tuggle, favored the Missouri Pacific R.R. Class A $5 preference stockholders, and it was Mississippi River Corp. which concocted MoPac's "Plan of Recapitulation," it was Mississippi which dictated to the MoPac Board of Directors, it was Mississippi which had increased the 34.5% of the consolidated equity of the Class A $5 preferred, $100 per share value stocks to 74.5% and had decreased the Class

B equity bearing *common stockholders* which were the holders of the residual rights to the assets of the company from its 65.5% of MoPac's equity to 25.5% of its equity for a loss of $800,000,000.

5. *The Plan of Recapitulation* requires Section 20b (49 U.S.C. Sec. 20b) of the Act, Section 20b being for "modification of railroad financial structures," but Section 20b was not used because under 20b(c) – the proposed alteration or modification (c) will be in the best interests of the carrier of each class of its stockholders, and of the holders of each class of its obligations. This is the reason Section 20b was not used by MoPac's Board of Directors on advice of Mississippi River Corp. which had concocted the MoPac Plan of Recapitulation of June 15, 1983, in order to defraud the innocent MoPac Class B stockholders out of 90% of their Class B cash and property values by giving this $800,000,000 in Class B cash and property to the Class A $5 preferential $100 per share value stocks. This was all done with the cooperation of Commissioner Tuggle's Commission Division 3 to defraud the Class B common stockholders out of their property by violating the Constitution of the United States, the Fifth and Fourteenth Amendments, Section 1 and Section 19a of the Act, which is for "valuation of property of carriers."

6. By this Honorable Supreme Court remanding this case back to the United States Court of Appeals for the Third Circuit, that court issuing an order, ordering the I.C.C. to evaluate petitioner's Class B common stocks under the Fifth and Fourteenth Amendments, Section 1 and under Section 19a of the Act, by obeying their oath of office, to "preserve, protect and defend the Constitution of this United States," the I.C.C. will find the true value of petitioner's Class B common stocks for their exchange into the stocks of Missouri Pacific Corporation and Union Pacific Corporation.

7. The question is, what of petitioner who did not accept the "Plan"? Under our laws of ownership, the majority of stockholders cannot confiscate the property of petitioner.

8. The relationship of stockholders in a corporation is not a political one, but a business one.

9. *The judges in every state are bound by the Constitution which is the supreme law of the land.* The senators, the representatives, the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states *are bound by oath or affirmation to support the Constitution.*

10. *Neither the federal courts nor the I.C.C. decided that this petitioner dissident had no right to evaluation of his Class B shares under the Fifth and Fourteenth Amendments to the United States Constitution, or under Section 19a of the Act. Due process evaluation has not been litigated neither by the I.C.C. nor by the federal courts. The Constitution of the United States must be enforced* by all judges and all executive and judicial officers. *They have taken an oath of office to the effect to "preserve, protect and defend the Constitution of the U.S."*

11. In this MoPac action this dissenter petitioner has preserved his rights throughout the period of recapitalization and had voted his Class B stocks against the 1974 Recapitulation Plan. He now seeks to enforce his rights according to the United States Constitution. ***He now seeks to hold those legally and financially responsible who deny him his constitutional rights to due process of law evaluation to his MoPac Class B shares, his property, under the Fifth and Fourteenth Amendments to the United States Constitution and under Section 19a,*** pursuant to 42 USC ,Sect 1983,a Federal statute.

12. *"No one is bound to obey an unconstitutional law, and no courts are bound to enforce it."* From 16 *American Jurisprudence,* 2nd Section, 256.

13. *Section 20a of the Act is for "Issuance of Securities of Carriers," and not for "Plans of Recapitulations."*

14. *The I.C.C. may have plenary power, but the I.C.C. does not have plenary power against the Constitution's Fifth and Fourteenth Amendments, Section 1, nor does I.C.C. have plenary power against due process evaluation, Article VI of the Constitution which states:*

> *"This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby,* any thing in the constitution or laws of any state to the contrary notwithstanding.
>
> The senators and representatives before mentioned, and the members of the several state legislatures, and *all executive and judicial officers,* both of the United States and of the several States, *shall be bound by oath or affirmation, to support this constitution;* but no religious test shall ever be required as a qualification to any office or public trust under the United States."

The MoPac Class B original suit was a class action commenced by *Betty Levin v. Mississippi River Corporation* in 1967, which was later joined by Alleghany Corp. and Robert Le Vasseur for better dividends for the MoPac Class B equity bearing

common stockholders. It was later made into a class action with respect to dividends by Honorable Frederick van Pelt Bryan U.S.D.J., Southern District of New York (67 civil 5095) on October 9, 1968, that Class B holders were not getting enough dividends on their Class B. No intervenors were permitted into the case after December 20, 1968. *See* U.S.D.C. S.D. of New York filed October 10, 1967 Civ. 5095 Notice of Settlement Order Betty Levin et al., plaintiffs against Mississippi River Corporation et al., defendants.

On December 18, 1972, a "Settlement Agreement" was made "dated as of December 18, 1972 by and between Alleghany Corporation, MoPac and Mississippi River Corporation," to sell to Mississippi River Corp. all of the 53% holdings of Alleghany's Class B equity MoPac shares of 21,243 shares at $2,450 value per Class B, or for about $97 million for the entire 39,731 shares of Class B. This price was so cheap that Mississippi wanted all the Class B at that price and used the Section 20a of the Interstate Commerce Act for a "Plan of Recapitulation" to take the Class B, equity shares at a fixed price and convert all of her 62% Class A $5 preferred $100 value shares into new equity bearing common based upon a value of $2,450 per Class B without first making a due process of law evaluation to find Class B real true value, which under due process is about $22,500 as of December 31, 1972 per Class B which is according to MoPac's Charter or "Agreed System Plan" of Reorganization of 1954-1955, 290 I.C.C. 477, which would give to the Class B equity common shares about $22,500 per share value, made up of $349 million Retained Income and $545 million in property values as of December 31, 1972, or a total of about $894 million for the 39,731 Class B, all these values belonging to Class B MoPac common.

The "Plan of Recapitulation" called for the conversion of the 1,860,000 shares of Class A $5 pfd. into new equity common by adding to the $5 pfd. over $615 million to $797 million values

by transferring these values from Class B and giving them to Class A $5 pfd., thereby increasing the Class A $5 pfd. $100 value stocks to a value of about $430 per share simply by converting the Class A $5 pfd. into a new $5 convertible preferred and then converting that convertible preferred into the new MoPac equity bearing common stocks. That 1,860,000 Class A $5 pfd. became through conversion 1,860,000 shares of MoPac $5 cumulative preferred, which in turn were converted into 1,860,000 shares of new equity bearing common, having now a new status by now having a claim on all of the Retained Income, lands, properties, mineral rights, worth over $800 million dollars that formerly all belonged to the Class B equity bearing common. This was all done on the basis of the Class B given a value of only $2,450 per share by Commission Division 3 without a due process of law evaluation of Class B by Division 3 according to the MoPac I.C.C. "Agreed System Plan" of Reorganization of 1954-1955 or MoPac Charter, 290 I.C.C. 477, under the due process evaluation would have given Class B a value of about $22,500 per share if Commission Division 3 had followed the MoPac Charter or Contract of 1953-1955. Instead of doing that, Commission Division 3 simply said that $2,450 value per Class B was "fair value" (*see* p. 58 Finance Docket #27346, Order of December 6, 1973 by the Commission) by following Hon. Judge Weinfeld's order that $2,450 per Class B was "fair value." On page D-5 of the MoPac May 8, 1973 Prospectus to its stockholders, Hon. Weinfeld states as follows:

> "The Court's role is a more delicate one which requires a balancing of likelihoods rather than an actual determination of the *facts* and *law* in passing upon whether the proposed settlement is fair, reasonable and adequate to the Class B stockholders and MoPac."

This shows that even Hon. Weinfeld was not basing his decision on "facts and law." So why did the I.C.C. Division 3 of the Commission follow Hon. Weinfeld?

Not to give Class B a due process of law evaluation by the Interstate Commerce Commission is against the Fifth Amendment of due process, adding to the $5 pfd. over $615 million to $797 million values by transferring these values from Class B and giving them to Class A $5 pfd., thereby increasing the Class A $5 pfd. $100 value stocks to a value of about $430 per share simply by converting the Class A $5 pfd. into a new $5 convertible preferred and then converting that convertible preferred into the new MoPac equity bearing common stocks. That 1,860,000 Class A $5 pfd. became through conversion 1,860,000 shares of MoPac $5 cumulative preferred, which in turn were converted into 1,860,000 shares of new equity bearing common, having now a new status by now having a claim on all of the Retained Income, lands, properties, mineral rights, worth over $800 million dollars that formerly all belonged to the Class B equity bearing common. This was all done on the basis of the Class B given a value of only $2,450 per share by Commission Division 3 without a due process of law evaluation of Class B by Division 3 according to the MoPac I.C.C. "Agreed System Plan" of Reorganization of 1954-1955 or MoPac Charter, 290 I.C.C. 477, under the due process evaluation would have given Class B a value of about $22,500 per share if Commission Division 3 had followed the MoPac Charter or Contract of 1953-1955. Instead of doing that, Commission Division 3 simply said that $2,450 value per Class B was "fair value" (*see* p. 58 Finance Docket #27346, Order of December 6, 1973 by the Commission) by following Hon. Judge Weinfeld's order that $2,450 per Class B was "fair value." On page D-5 of the MoPac May 8, 1973 Prospectus to its stockholders, Hon. Weinfeld states as follows:

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Not to give Class B a due process of law evaluation by the Interstate Commerce Commission is against the Fifth Amendment of due process, and Article 1, Section 10 of the Constitution — "No state shall . . . pass any ex post facto law, or law impairing the obligation of contracts . . . ." The I.C.C. by using Section 20a being for "Issuance of Securities of Carriers," stocks and bonds and other papers of indebtedness is impairing the MoPac Charter, 290 I.C.C. 477, especially pages 624 and 625 or "Agreed System Plan" of Reorganization of 1954-1955 which is a contrast, and Class B must be evaluated under due process of law first according to the "Agreed System Plan." The law is on the side of Class B shares and the law must be enforced for the sake of justice. In my opinion, the decision of the Commission Division 3 is based strictly on the basis of MoPac's original application and supporting documents Division 3 of the I.C.C. placed no weight on my testimony either at the I.C.C. Hearing on September 17 to 20, 1973, Finance Docket #27346, in Hearing Room A before the I.C.C.'s Honorable William J. Gibbons, Administrative Law Judge or on my brief dated October 15, 1973 to the I.C.C. asking the I.C.C. to give my Class B shares a due process of law evaluation under Section 19a and under the Fifth and Fourteenth Amendments, Section 1 in order to find Class B true value. Nor did the I.C.C. pay any attention to my January 14, 1974 petition to the I.C.C. for reconsideration for a due process of law evaluation of my Class B shares according to 290 I.C.C. 477 "Agreed System Plan" or MoPac Charter as I brought it out on pages 13 and 14 that in a due process evaluation my Class

B was worth around $22,500 per share as of December 31, 1972, based upon its retained income of $349 million and $545 million in property values or about $894 million for the 39,731 shares of Class B.

REASONS FOR GRANTING THE WRIT

I.

Article VI, Sections 2 and 3 of the Constitution of the United States states:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof; . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding.
>
> The senators and representatives beforementioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several States shall be bound by oath or affirmation to support this constitution."

All judges have taken an office to *preserve, protect and defend the Constitution of the United States.* Therefore the I.C.C. should be ordered by the Court to evaluate petitioner's Class B MoPac equity bearing common stocks under the Constitution of the United States — the Fifth and Fourteenth Amendments, Section 1 and under Section 19a of the Act, which is for "Valuation of Property of Carriers," for the I.C.C. Commissioners to obey their oath of office and the court order, for the I.C.C. to find the true value of petitioner's Class B common stocks.

All who work for the United States Government have taken an oath of office to "*preserve, protect and defend the Constitution of the United States,*" and all who work for the Court also work for the United States Government, and all judges must help petitioner by enforcing the Constitution of the United States, by the Court issuing an order, ordering the I.C.C. to evaluate petitioner's Class B common stocks constitutionally, under the Fifth and Fourteenth Amendments, Section 1 and under Section 19a of the Act. That is the reason why all Government people have taken an oath of office, to "*preserve, protect and defend the Constitution of the United States.*"

Article III, Section I of the Constitution of the United States, states as follows: "*The judges, both of the Supreme and inferior courts, shall hold their offices during good behaviour.*" It is *good behavior* when the Judges of this Court do their constitutional duty by obeying their *oath of office "to preserve, protect and defend the Constitution of the United States.*" If they don't obey their oath of office by not enforcing the United States Constitution — the Fifth and Fourteenth Amendment, they cannot hold their judgeships.

II.

A Matter of Fraud in the MoPac Plan of Recapitalization of 1973

The "Plan of Recapitalization" of the Missouri Pacific Railroad Co., was done with a clear intent to defraud the minority Class B common MoPac stockholders, by Mississippi River Corporation, which had elected Missouri Pacific Railroad Company's Board of Directors, and dictated to the Board of Directors a "Plan of Recapitalization" that increased the equity of the Class A $5 pfd. $100 per share value stocks from 34.5% as of December 31, 1972 to 74.5% and decreased the equity of the MoPac Class B common from 65% to 25.5%, the "B"

stockholders having been the holders of the residual rights to the assets of the Company, the Class A stockholders getting from the Class B common about $800,000,000 in Class B cash and property values, especially the Land Grants of 16,738,413 acres of mineral rights, fabulously rich in billions of barrels of oil, billions of tons of low sulphur coal, trillions of cubic feet of natural gas, and billions of tons of trona or baking powder. Mississippi River Corp. which concocted this "Plan," owned 63% of Class A or 1,158,395 shares, or over 60% of the voting stock, gaining over $500,000,000 in Class B property, without paying the IRS any taxes, which is still owed to IRS.

In the latter part of January, 1983, *the United States Supreme Court issued its strongest affirmation ever on the right of individual shareholders to sue for fraud* in the purchase or sale of securities. Rebuffing arguments by the securities and accounting industries, the justices ruled unanimously that an individual's right to sue for damages caused by fraud is implied in the 1934 Securities & Exchange Act.

In a decision written by Justice Thurgood Marshall, the high Court said, "*The Court said the right of individuals to sue for securities fraud 'has been consistently recognized for more than 35 years.'* The justices also said the amount of proof needed to win a private lawsuit for securities fraud is the same in other civil suits. The person suing must prove the case by a preponderance of the evidence," rather than with the tougher standard of "clear convincing evidence" used in other kinds of fraud cases.

The United States Government IRS has $150,000,000 in capital gains taxes owed to the IRS by the Missouri Pacific R.R. Co., in taxes for the $800,000,000 in Class B MoPac common stockholders' cash and property values that were transferred to the $5 Pfd. Class A $100 per share value stocks, without the payment of any taxes to the United States Government IRS. When

the Honorable Court Judges issue a court order, ordering the I.C.C. to evaluate petitioner's MoPac Class B common stocks under the Fifth and Fourteenth Amendments, Section 1, and under Section 19a (49 U.S.C. Sec. 19a) of the Act, it will enable the United States Government to collect $150,000,000 in taxes when the I.C.C. comes up with the true value of MoPac Class B equity bearing common stocks. Petitioner's question is, why should the federal courts not order the I.C.C. to evaluate MoPac Class B common shares under the Fifth and Fourteenth Amendments, Section 1 and thereby enable the United States Government IRS to collect this huge amount of taxes from this above railroad?

On April 6, 1984 the United States Court of Appeals for the Third Circuit advised petitioner Gabriel, in petitioner Gabriel, Pro Se v. Interstate Commerce Commission and, United States of America, the Court had written petitioner that the "above entitled case listed for disposition on Thursday, May 3, 1984 will be listed for disposition on Thursday, May 3, 1984, will be submitted on briefs, with no oral argument, pursuant to Rule 12(6) of the rules of this circuit. This means that your presence will not be require."

1. I have MoPac common stocks having a value in over the counter today, of $4,000,000, or having a potential value of about $40,000,000 in a due process of law evaluation under the Fifth and Fourteenth Amendments, Section 1 and under Section 19a of the Act, "valuation of property of carriers," and Gabriel did not have his day in court to bring out all of these facts of fraud and conflict of interest by the I.C.C., by Allegheny Corp., by Robert LeVasseur, and by Betty Levin, because all of them did not adequately and fairly represent, as Class B class action representatives in a class action under class action Rule 23, the minority Class B stockholders who knew nothing of the fraud and conflict of interest going on this MoPac Plan of Recapitalization case.

2. Petitioner's very valuable case was put on Local Rule 12(6) as a case being frivolous, or of non importance. Because petitioner is Pro Se, Gabriel is being treated as an outcast, to be stepped on by the servants of the people, as if I have no right to represent myself. But my right to represent myself is currently codified in 28 U.S.C. Sec. 1654. Imagine that a case of $4,000,000 today's value in the over the counter market, potentially worth $40,000,000, not to have petitioner make an appearance and bring out the fraud and conflict of interest of this *fraudulent case,* before judges who could hear the facts of the case, after petitioner Gabriel spent so much time and cost on this case. If petitioner cannot get a hearing on a due process evaluation case on the Fifth and Fourteenth Amendments, Section 1, what happens on less obvious cases. For shame to our United States court system-the U.S.Court of Appeals For The Third Circuit.

III.

Petitioner Gabriel is not going to lose this about $40,000,000 MoPac Class B equity bearing common stock value case because the MoPac Class B stocks are the senior securities of the Missouri Pacific Railroad Co. because the Interstate Commerce Commissioners decided July 29, 1954, in Finance Docket No. 9918,290 I.C.C. 477, especially pages 624 and 625, to make the "B" common stock the "*residuary beneficiary or any future prosperity the property may enjoy. The prior Class "A" stock is limited as to dividends and is noncumulative. But the "B" stock is for the present, and for the foreseeable future, principally valuable as a token for speculation!*" *See* 290 I.C.C., pages 624-25. The MoPac Class B common stockholders are the holders of the residual rights to the assets of the Company. The Class B common stocks are the heirs to — *16,738,413 acres of land grants* given to the MoPac railroad in the 1890's in order to help defray the huge costs the railroad had in building the railroad through the then wilderness. The railroad owns the mineral rights to those

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land grants, that are rich in billions of barrels of oil, billions of tons of low sulphur coal, trillions of cubic feet of natural gas, and billions of tons of trona or baking powder. My MoPac Class B common shares are very valuable. No wonder for all of this *harassment against Gabriel in different ways.* That is the reason why I am fighting so hard to win a *due process I.C.C. evaluation* of my Class B stocks. Besides I need this money that the MoPac Class B stocks are worth for my Bible work, to teach people *God Our Creator's Commandments.*

Another reason for issuing the writ is for this Court to reverse the judgment of the United States Court of Appeals for the Third Circuit because that court's judges go along the I.C.C.'s wishes to favor the railroads in most everything that the railroads wish to do, but in this instant MoPac case, *it was not the wishes of MoPac that were favored by the I.C.C., but it was the wishes of Mississippi River Corporation's wishes that the I.C.C. was favoring because MoPac was under the voting control of Mississippi River Corporation, Mississippi River having elected MoPac's Board of Directors, since 1963, and it was Mississippi River Corporations' wishes that the MoPac Railroad was following, Mississippi River Corp. was favored in MoPac's Plan of Recapitulation by about $504,000,000 in Class B cash and property. All in all, MoPac Class A $5* preferential $100 per share value *stocks were favored by $800,000,000 in Class B cash and property values* owing IRS $150,000,000 taxes not paid. Mississippi River Corp. owned about 63% of all Class A $5 preferred stocks, and 63% of $800,000,000 is *around $504,000,000 that Mississippi River Corporation was favored in this MoPac Plan of Recapitulation under a Section 20a proceedings, but Section 20a is only for the "Issuance of Securities of Carriers,"* of stocks and bonds and other evidences of indebtedness. But Sec. 20a is not for Plans of Recapitulation. *Section 20b* (49 U.S.C. Sec. 20b) *is what is required in Plans of Recapitulation. Section 20b is the Mahaffie Act — a voluntary plan* whereby the stockholders and

bondholders and the I.C.C. get together and decide on a Plan of Recapitulation which is favorable to all including the preferred stocks, and the common stocks. *That is the reason why Mississippi River Corporation used Section 20a and not Section 20b, in order to rob and plunder the Class B equity bearing common stockholders out of their residual rights to the assets of MoPac, including 16,738,413 acres of Land Grant Mineral Rights, rich in natural resources, in oil, natural gas, coal, trona or baking powder. Class B is "residuary beneficiary of MoPac."*

IV.

The Constitution of the United States is a projection of God's Commandments — "Thou shalt not kill," "Thou shalt not steal," and etc. Judges who don't live up to their "Oath of Office" to preserve, protect and defend the Constitution of the United States are denying Americans their constitutional rights to their property, as in this case, when petitioner is seeking due process evaluation of his Class B common stocks under the Fifth and Fourteenth Amendments, Section 1. By so doing, judges are helping the Missouri Pacific Railroad Corporation, as in petitioner's case, in plundering petitioner and many other Class B common stockholders out of 90% of the equity value of their MoPac Class B common stocks, by becoming a party with the MoPac Railroad Corporation into reducing the 65.5% equity value of petitioner's MoPac Class B shares to only 25.5%; and at the same time increasing the equity value of the $5 Class A preferential stock from 34.5% to 74.5%.

The I.C.C. does not wish to have Class B MoPac common stocks evaluated under due process of law under the Fifth and Fourteenth Amendments, Section 1, or under Section 19a of the Act — "valuation of property of carriers," because Commission Division 3, under the control of Commissioner Tuggle decided

that a value of $2,450 per Class B was "*Fair Value,*" but $2,450 per Class B was arrived at in a "Settlement Agreement, dated as of Dec. 18, 1972, by and between Alleghany Corp., MoPac and Mississippi River Corp.," for Alleghany to sell its 53% Class B holdings to MRC at $2,450 per share in bulk, *because Alleghany Corp. had won the voting rights litigation in* Levin v. Mississippi River Fuel Corp., ____ *386 U.S. 162, 170 (1967), Alleghany thus gaining an independent veto power by its 53% control of MoPac Class B common stocks* and *Alleghany being a Motor Carrier by controlling Jones Motor Corp., in No. MC-F-10444,* Alleghany as a Motor Carrier was subject to the plenary jurisdiction of the I.C.C. under Part II of the Act, *Alleghany had to sell its MoPac Class B 53% holdings in bulk to MRC at a low price* so as to be rid of its MoPac Class B shares *in order to remain under the plenary jurisdiction of the I.C.C. Alleghany keeping this fact a secret in order to save an annual 70% IRS penalty tax* because less than 5 persons controlled Alleghany, and the I.C.C. under Commission Tuggle's Control of *Com. Division 3, wanted Alleghany to sell its Class B MoPac 53% holdings in bulk because Alleghany with its voting rights litigation victory in 1967 in* Levin v. Mississippi River Fund Corp., *386 U.S. 162, 170 (1967), controlled MoPac Railroad,* and *to have a Motor Carrier such as Alleghany Corporation control the MoPac Railroad was against the rules of Commission Division 3.* The I.C.C. Division 3 under Comm. Tuggle's control, said that $2,450 value per Class B common was "*fair value*" even though $2,450 value per Class B whose equity reduced to 25.5% from 65.5% was a low value in order for MRC to be financially able to buy the 53% Alleghany's Class B holdings in bulk cheaply. Alleghany and MRC making an agreement between the two of them to try to include as many of the minority Class B stockholders as possible in this "Settlement Agreement," meaning those who wanted to sell their Class B stocks at a *value* of $2,450 per share.

In the Compromise Settlement Agreement or "Plan," the Class A equity was increased to 74.5% from 34.5%, and the 65.5% of Class B equity was decreased to 25.5%.

All in all the Class A $5 preferred $100 per share value stocks taking about $800,000,000 Class B cash and property values from the Class B equity bearing common stocks. *Missouri Pacific R.R. Co., was under the control of Mississippi River Corporation because MRC elected MoPac's Board of Directors, Mississippi River Corp. advising MoPac's Board of Directors how to recapitalize MoPac under Section 20a* (49 U.S.C. Sec. 20a) *of the Act, when Section 20a is only good for the* "issuance of securities of carriers," *stocks and bonds and paper of indebtedness, but not for Plans of Recapitalization.*

V.

This is a constitutional question. The granting of the Writ will restore petitioner Gabriel's constitutional rights to his own property, under the Fifth and Fourteenth Amendment, Sec. 1, and under Sec. 19a of the Interstate Commerce Act, which is for the "*Valuation of Property of Carriers,*" for a due process of law evaluation of his property in MoPac Class B common stocks.

Gabriel has been fighting for many years in order to get his property in MoPac Class B common stocks evaluated under due process of law, under the Fifth and Fourteenth Amendment — in and out of the Interstate Commerce Commission, in and out of the United States Courts. It is about time that the United States judges obeyed their oath of office of:

> I do solemny swear (or affirm) that I will faithfully execute the office of the judge of the United States Courts, and will do the best of my

> ability to preserve, protect and defend the Constitution of the United States,"

by the judges "preserving, protecting and defending the Constitution of the United States by the judges enforcing the Fifth and Fourteeth Amendment, Sec. 1, to the United States Constitution by the judges issuing an order, ordering the Interstate Commerce Commisssion evaluate petitioner's MoPac Class B equity bearing, common stocks under the Fifth and Fourteenth Amendments, and under Sec. 19a of the Act, which is for "*Valuation of Property of Carriers,*" for the I.C.C. to find the true value of petitoner's Class B common stocks of the Missouri Pacific Railroad Company, so that petitoner Gabriel may become enabled to exchange the true value of his MoPac Class B common stocks for the true value of stocks that he will receive from Missouri Pacific Corporation in return, so that Gabriel may be able to get back on his Bible work.

Petitioner James C. Gabriel is a *Dissident* MoPack Class B equity bearing common stockholder, who had voted *against* the June 15, 1973 approval of the *Plan of Recapitalization of* Missouri Pacific Railroad Co., voting all his "B" common shares *against* the *"Plan,"* seeking instead a due process of law evaluation under the Fifth and Fourteenth Amendment Sec. 1, and under Sec. 19a of the Act, in order to get the true value of his Class B stocks to exchange them for the true value of stocks he would receive in exchange. Petitoner Gabriel has been fighting for about 11 years to get the United States Court Judges to obey their oath of office, to "*Preserve, Protect and Defend the Constitution of the United.*" It is about time the judges obeyed their oath of office.

CONCLUSION

Therefore, petitioner *pro se* respectfully prays that petitioner's civil action complaint for a due process of law evaluation under the Fifth and Fourteenth Amendments, Section 1, and under Section 19a of the Act which is for "Valuation of Property of Carriers," be remanded to the U.S. Court of Appeals for the Third Circuit, so that court issues an order to the Interstate Commerce Commission, ordering the ICC to evaluate petitioner's MoPac Class B common shares under the Fifth and Fourteenth Amendments, Sect. I, and under Sect. 19a of the Act. so that the ICC finds the true value of the Class B common stocks, in order that petitioner Gabriel exchanges the true value of B common for the true value stocks he receives from Missouri Pacific Corp. in exchange.

Respectfully submitted,

James C. Gabriel Pro Se

JAMES C. GABRIEL
Petitioner Pro Se

Service to:

Office of the General Counsel,John H Broadley,Esq.
John J.McCarthy,Jr.Esq.
Interstate Commerce Commission
12th & Constitution Ave.,Washington,D.C.20423

Office of the Commissioner of Internal Revenue
Hon.Roscoe Eggers
Dep't.of the Treasury
1111 Constitution Ave.
Washington,D.C.

Office of the Attorney General of the U.S.
Hon.William French Smith
Dep't.of Justice-Constitution & 10th St.
Washington,D.C.20044

Neil R.Ellis,Esq.
John J.Powers,III,Esq.
Dep't.of Justice
10th & Constitution Ave.
Washington,D.C.20530

APPENDIX

JUDGMENT ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 83-3121

JAMES C. GABRIEL,

Petitioner

v.

INTERSTATE COMMERCE COMMISSION and UNITED STATES OF AMERICA,

Respondents

On Petition for Review of an Order of the Interstate Commerce Commission Finance Docket No. 30,000

Submitted Under Third Circuit Rule 12(6)
May 3, 1984

Before: ADAMS, WEIS and VAN DUSEN, *Circuit Judges*

After considering the contentions raised by Petitioner, it is

ADJUDGED AND ORDERED that the order of the Interstate Commerce Commission be and is hereby affirmed.

Costs taxed against Petitioner.

Judgment

BY THE COURT,

s A.M. Adams
Circuit Judge

ATTEST:

s/ Sally Mrvos
Clerk

Certified as a true copy and issued in lieu of a formal mandate on June 4, 1984.

Test: s/ M. Elizabeth Ferguson

Chief Deputy Clerk, U.S. Court of Appeals
for the Third Circuit

DECISION OF THE INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 30,000[1]

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY-CONTROL-MISSOURI PACIFIC CORPORATION AND MISSOURI PACIFIC RAILROAD COMPANY

Decided: January 7, 1983

By decision served October 20, 1982, we approved the consolidation of the Union Pacific Railroad (UP), Missouri Pacific Railroad (ZIP), and Western Pacific Railroad (WP). The consolidation has been effected through a series of transactions whereby Pacific Rail System, Inc. (PRSI), a new subsidiary of Union Pacific Corporation (UPC), became the sole stockholder of UP and Missouri Pacific Corporation (MPC). MPC is the sole stockholder of MP. The consolidation transactions also include the merger of WP into a subsidiary of UP. WP is the surviving corporation in the subsidiary merger and UP is the sole stockholder of WP. Owners of WP stock, other than UP, will receive $20 per share for their stock. The consolidation decision became effective on November 19, 1982.[2]

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1. Embraces Finance Docket No. 30,000 (Sub-Nos. 1-10 and 14-43) and Nos. MC-F-14448 and MC-F-14449.

2. By decision served November 18, 1982, Chairman Taylor denied various petitions seeking an administrative stay of the October 20th decision. At present, several parties are seeking a judicial review of the consolidation decision. The United States Court of Appeals for the District of Columbia Circuit and the United States Supreme Court denied all requests for stays pending judicial review. The consolidation was consummated on December 22, 1982.

Decision

* * *

. . .1100.98(e)(1). The stay request was not filed within the time required by our rules and the merger has now been consummated. The requests for reconsideration and for stay are denied.

4. *Petition of James C. Gabriel and joint petition of William R. Wesson, Anne G. Wesson, and John Charles Vaiani.* These parties' petitions seeking reopening and reconsideration were filed on November 19, 1982. Mr. Gabriel and joint petitioners are holders of untendered shares of MP class B common stock. That class of stock was abolished by a recapitalization plan in 1974. Further, in 1978 MP and its subsidiaries were merged into a subsidiary of MPC. Pursuant to the 1978 reorganization MPC became the sole stockholder of MP and all outstanding shares of MP stock were to be exchanged for MPC stock.

In our October 20th decision we concluded that holders of unexchanged shares of MP class B stock certificates have no rights cognizable in the instant consolidation proceeding arising from their dissent to the 1974 recapitalization and their refusal to exchange those certificates. *Union Pacific — Control-Missouri Pacific; Western Pacific,* 366 I.C.C. 459, 630-1 (1982). Petitioners raise no relevant issues of fact or law identifying any material error regarding the prior decision. Their request for reopening and reconsideration is denied.

This action will not significantly affect either the quality of the human environment or energy consumption.

Decision

It is ordered:

1. The petitions of Daniel A. Bruno; James C. Gabriel; and William R. Wesson, Anne G. Wesson, and John Charles Vaiani, seeking administrative stay and reopening and reconsideration, are denied.

2. This decision is effective on its date of service.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioner Andre dissented with a separate expression. Vice Chairman Gilliam did not participate.

AGATHA L. MERGENOVICH
Secretary

(SEAL)

COMMISSIONER ANDRE, dissenting:

In view of my opposition to the consolidation, I would grant the petitions.